

YELLAYA  
v.  
VIRAYA.

instituted by such parties for any such cause of action unless such suit shall be instituted within six months from the time at which the cause of action arose." In the case before us the sale of a larger interest than what was liable to be sold is, according to the appellant, the grievance for which he seeks redress; and the claim, therefore, that the sale was illegal so far as it purported to convey more than the right of redemption appears to us to fall under that section. It may be that the appellant does not seek to annul the sale *in toto*; but its cancelment *pro tanto*, so far as the interest conveyed is in excess of the right of redemption, is also a remedy for an injury caused by a proceeding under the Act. We are of opinion that the suit was properly held to be barred by limitation and dismiss this second appeal.

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### APPELLATE CIVIL—FULL BENCH.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, Mr. Justice Kernan, Mr. Justice Muttusami Ayyar, Mr. Justice Brandt, and Mr. Justice Parker.*

1886.  
Sept 3.

REFERENCE FROM THE BOARD OF REVENUE UNDER S. 46 OF THE  
INDIAN STAMP ACT, 1879.\*

*Stamp Act, sch. II, art. 15 (a)—Receipt—Endorsement of payment on mortgage deed.*

An endorsement on a mortgage, acknowledging the receipt of the sum thereby secured is exempt from stamp duty under sch. II, art. 15 (a), of the Indian Stamp Act, 1879.

REFERENCE to the High Court by the Board of Revenue under s. 46 of the Indian Stamp Act, 1879.

On the 1st April 1886 the Collector of Tanjore (J. B. Pennington) made the following reference to the Board of Revenue:—

"The Sub-registrar of Tirukattupalli has impounded an instrument which purports to be a receipt endorsed on a deed of mortgage without possession, whereby the mortgagee acknowledges the receipt of the principal of the original instrument plus the interest due on it.

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\* Referred Case No. 3 of 1886.

“Now, under art. 15 (a), sch. II of Act I of 1879, this receipt would appear to be exempted from the payment of any duty; but the Sub-registrar considers that this provision of the Act has been narrowed in its scope by the terms of the resolution of the Board, in their Proceedings, dated 19th December 1883, No. 3852, paragraph 3. He makes a distinction between receipts endorsed on simple bonds and receipts endorsed on mortgage deeds whether simple or usufructuary, and considers that these latter receipts should be duly stamped with one-anna stamp; but I do not know whether this is the opinion of the Board, or, judging from the words ‘custody of any specified property,’ whether they only distinguish between usufructuary mortgages and mortgages creating only an encumbrance on property without involving its custody or possession. And before drawing the distinctions referred to in paragraph 2, I would submit that the terms of art. 15 (a), sch. II, of the Act, are so plain that I do not understand how any reservation in the class of exempted receipts can be made. The wording of art. 15 (a), sch. II, of the Act, viz., ‘receipts endorsed on or contained in any instrument duly stamped’ seems wide enough to cover any kind of document.

REFERENCE  
UNDER STAMP  
ACT, s. 46.

“I request therefore that the Board will be good enough to inform me whether any distinction was contemplated in their Proceedings, dated 19th December 1883, and, if so, to instruct me as to what classes of receipts are exempt from stamp duty and what not.”

The resolution of the Board, dated 27th May 1886, was as follows:—

“The position taken by the Board in their Proceedings of 19th December 1883, No. 3852, was that receipts endorsed on deeds, which involved the custody of specified property, amounted to and, therefore, were releases.

“As at present constituted, they doubt whether they were justified in so deciding, or whether, as in Board’s Proceedings, dated 27th October 1879, No. 3028, they should, before holding a receipt to be a release, have demanded the additional words of actual relinquishment.

“The present deed, as a case in point, they resolve therefore to refer to the High Court for decision; its wording is the receipt of money, its effect the release of land; is it to be exempted as the former, or stamped as the latter?”

REFERENCE  
UNDER STAMP  
ACT, s. 46.

The Acting Government Pleader (Mr. *Powell*) for the Board of Revenue.

The judgment of the Full Bench (Collins, C.J., Kernan, Muttusámi Ayyar, Brandt, and Parker, JJ.) was delivered by

COLLINS, C.J.—We are of opinion that the endorsement on the mortgage bond is exempted from stamp duty under sch. II, art. 15, of the Stamp Act of 1879, it being a receipt within the terms of the exemption.

## APPELLATE CIVIL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and  
Mr. Justice Parker.

1886.  
Sept. 24, 25.

KURUPAM ZAMÍNDÁR (PLAINTIFF), APPELLANT,

and

SADASIVA (DEFENDANT), RESPONDENT.\*

*Limitation Act, sch. II, arts. 178, 179 (3)—Civil Procedure Code, s. 583—Application for refund of moneys levied under decree reversed on appeal—Review rejected—Time not excluded from computation.*

Where a review of judgment has been applied for, and, after notice to the other side, refused, the period during which such application was pending cannot be excluded in computing the period of limitation for execution of the decree under art. 179 (3) of sch. II of the Indian Limitation Act.

*Sembla.*—An application for refund of moneys levied in execution of a decree subsequently reversed on appeal is not governed by art. 179 but by art. 178 of sch. II of the Limitation Act.

APPEAL against an order of J. Kelsall, District Judge of Vizagapatam, in execution proceedings in suit 11 of 1878.

The facts necessary for the purpose of this report appear from the judgment of the Court (Collins, C.J., and Parker, J.).

*Subba Ráu* for appellant.

*Mr. Powell* for respondent.

JUDGMENT.—In this case Sri Rájá Vyricherla Suryanáráyana Rázu Bahadur, zamíndár of Kurupam, had sued defendant, Kuehibhotla Sadasiva Parabrahman, for mesne profits, and had got a decree, which was subsequently reversed by the High Court

\* Appeal against Order 56 of 1886.